

Mark B. McFeeley
Chief Judge
Albuquerque, NM

On behalf of the United States Bankruptcy Appellate Panel of the Tenth Circuit (BAP), I am pleased to provide this report on the BAP's eleventh full calendar year of operation.

The number of bankruptcy appeals filed in the Tenth Circuit decreased slightly in 2007, with a year end total of 182, down 4% from the 189 appeals filed in 2006. The number of appellants electing to proceed before the BAP also decreased slightly, from 71% in 2006 to 68% in 2007. Through the end of 2007, 176 appeals were taken to the Tenth Circuit Court of Appeals from BAP decisions. Of these, 160 have been concluded. Seventy-eight of the appeals were decided on the merits with 69 affirmed and 8 reversed. The remaining 82 appeals were dismissed. For the eleventh year, the Judges of the BAP have achieved their goal of disposing of most appeals within 60 days from submission, with a 2007 median "submission to disposition" time of 66 days. On average, 156 days elapse from the filing of the notice of appeal until a final judgment is entered by the BAP.

The Circuit Council's resolution of March 8, 1999, approving the establishment of the BAP states that "The Chief Judge of the BAP, with the advice and the consent of the Chief Circuit Judge, may from time to time designate any active or recalled bankruptcy judge, not otherwise appointed to the Bankruptcy Appellate Panel, to serve on a pro tem basis." The use of pro tem Judges provides the panel with additional experience and expertise and serves to strengthen the efforts of the BAP. In 2007, three of my colleagues served as pro tem Judges for the BAP, from the District of Kansas, the Honorable Robert D. Berger and the Honorable Janice Miller Karlin, and from the Northern District of Oklahoma, the Honorable Dana L. Rasure. On behalf of the BAP, I would like to extend our sincere appreciation to Judge Berger, Judge Karlin, and Judge Rasure.

As of December, 2006, all active Bankruptcy Judges in the Tenth Circuit have had at least one opportunity to sit in a pro tem capacity with the BAP. In July 2007, the BAP extended a general invitation to the Bankruptcy Judges to express interest in whether they would again like to sit on a panel. The response was overwhelmingly favorable. The majority of the Judges indicated that their experience as a panel member was a positive one. In addition to the previously stated benefits to the BAP on the use of pro tem Judges, this experience provides the trial court Judge with a perspective into the reflective and collaborative process of the appellate system.

As you know, in 2006 the Judicial Conference adopted a policy requiring the use of automated conflict screening software for Judges. At that time, the BAP's legacy case management system known as NewAIMS did not provide this functionality, and conflict checking for the BAP Judges remained a manual process. In December, 2006, the BAP went "live" with the new appellate case management system ("CM"). CM includes an automated recusal checking component, which functions fairly well. Data entry into CM is performed by staff in the BAP Clerk's Office based on the information provided by each BAP Judge. The program runs automatically when certain key events occur in a case, such as the assignment of a panel. Additionally, a conflict report is run each week and reviewed. Conflict checking for visiting Judges remains a challenge, and will be resolved once one system is developed for all Judges.

In October, 2007, the BAP Local Rules Committee met to review proposed revisions to the rules as recommended by its subcommittee. The majority of the proposed revisions were suggested by the subcommittee specifically to address issues related to the implementation of electronic case filing ("ECF"). In making its recommendations, the subcommittee identified several areas in which to make the electronic filing process easier for parties. One important stated goal was to reduce the amount of filed paper. Toward this end, the Committee suggested that rather than requiring a party to file an Entry of Appearance form and a separate Statement of Interested Parties form, the two forms be combined to one. And rather than have counsel file a "courtesy" copy of the Designation of Record and Statement of Issues with the BAP, staff from the BAP Clerk's Office will insure compliance with the Bankruptcy Rules by reviewing the Bankruptcy Court docket for the timely filing of the papers. The Committee's expectation is that by reducing the number of filing events, the number of electronic filing errors will also be reduced, resulting in fewer modifications to the Court's docket. It is anticipated that ECF will be implemented by the BAP in the fall of 2008.

Until recently, BAP Judges received very little in the way of law clerk assistance. In 2000, the Chief BAP Judges and BAP Clerks met with staff of the Administrative Office to discuss the development of a national formula for the allocation of BAP law clerks. The proposed formula was approved by the Judicial Conference in 2001. The application of the formula resulted in the authorization of two full-time positions for the Tenth Circuit, to be shared amongst the nine BAP Judges. No additional funding for space or capital goods was provided. The Judges divided the two full-time positions into five part-time positions located throughout the Tenth Circuit. Although each BAP law clerk may be assigned to a particular BAP Judge, in the absence of clerk availability, another clerk may be pulled to assist any other BAP Judge. Thus, the BAP

implemented a system by which its limited resources may be maximized.

To further enhance this system, the BAP Judges authorized the development of a BAP Law Clerk Workshop (“Workshop”). In February, 2007, the BAP law clerks attended the Workshop held in Denver. The law clerks were greeted by Circuit Executive Dave Tighe and Deputy Executive Vicky Parks, who explained their positions and the role of the Tenth Circuit Judicial Council. Next, the Honorable David M. Ebel addressed the ethical responsibilities we all face as judicial employees, followed by an informative and practical discussion during which time he shared his “Top Ten Tips for Law Clerks.” Niki Heller, Chief Staff Counsel, described the role of the Tenth Circuit Staff Counsel’s Office and emphasized the importance of peer review as a teaching and learning tool. Betsy Shumaker, Clerk of Court, emphasized the importance of the court family working together, reviewing the docket, and keeping an eye on procedures. Ginni Kolb, Tenth Circuit Financial Office, clarified travel regulations and answered questions on the proper completion of travel vouchers. David Aemmer, Chief Circuit Mediator, described the function of his office and the nature of mediation at the Tenth Circuit. Terry Hemming, Tenth Circuit Librarian, and his staff Susan Elder and Donna Stegner, conducted an entertaining and informative session, stressing that the library staff is always available to assist. The remainder of the Workshop was spent learning the history of the BAP, the role of the BAP Clerk’s Office, and the role of the BAP law clerk. On behalf of the BAP, I would like to extend my sincere appreciation to everyone who helped make this Workshop an unqualified success, including all of the mentioned presenters, the staff of the BAP Clerk’s Office, and Shannon Nairn and Ruth Mares, BAP Law Clerks and Co-Chairs of the Workshop committee.

Continuing education of the bankruptcy bar, the public, and other court units remains an important focus of the BAP. Toward this end, staff of the BAP Clerk’s Office were pleased to honor a request from the Clerk of the Ninth Circuit BAP, Harold Marenus, for a site visit to view CM first-hand in a production environment. An agenda for the visit was developed that included a demonstration of the various CM modules including the remote transfer feature, which allows person data captured at the bankruptcy court level to be transmitted to the BAP’s CM system. Creating and docketing panel orders, calendaring, and reporting functions were demonstrated and warranted further discussion. Learned implementation lessons and CM issues and challenges were amongst the topics discussed in the day and a half program. Of mutual benefit was the general exchange of knowledge and insight into the operations of each of the BAP Clerk’s Offices. I would like to thank not only the staff of the BAP Clerk’s Office for organizing the program, but the staff of the office of the Circuit Executive and the

Circuit's Automation Team, for their support and participation. The agenda was well received by the Ninth Circuit BAP, and set the stage for the development of a national appellate program.

The BAP was saddened to hear of the untimely death of the Honorable Charles E. Matheson, retired Bankruptcy Judge from the District of Colorado. In addition to his trial court appointment, Judge Matheson served on the BAP from April, 1997, until his retirement in January, 2001. We will always remember "Chuck" for his good nature and his many varied interests, such as his love of music and sailing. We are grateful for his many contributions to the BAP during his tenure. Our heartfelt sympathy is with his wife and family.

Again in closing, I must acknowledge that the accomplishments of the BAP would not have been possible without the considerable assistance and support of the Judges of the Tenth Circuit Court of Appeals, the Office of the Circuit Executive, the Tenth Circuit Clerk's Office, the District and Bankruptcy Court Judges and Clerks' Offices, the Bankruptcy Appellate Panel Clerk's Office, as well as my colleagues. Their support and advice are always very much appreciated.